COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 463 of 2001
(Def. Old No.101/2000)

Smt. Deepa Garg
& 4 others. … **Appellants.**

Versus

Ram Nath and others. … **Respondents.**

Mr. J.C. Joshi, learned Senor counsel for the appellants.
Mr. R.B. Agarwal, Mr. D.S. Patni, learned counsel for the respondents.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date August 04, 2004.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and Award dated 31.05.1999, passed by Motor Accident Claims Tribunal/Additional District Judge, Roorkee,***(in short the Tribunal)*** in Motor Accident Claims Case No. 36 of 1995 whereby the learned Tribunal has awarded Rs. 7, 77, 500/- as compensation to the claimants-appellants along with 12 % Simple Interest against O.P.No.3, National Insurance Co. Ltd. (respondent No.3). In this appeal, prayer for enhancing the compensation amount has been made by the appellants.

Brief facts, giving rise to the present appeal, are that the claimant no.1 Deepa Garg filed claim petition praying for compensation to the tune of Rs. 90,60,000/- under Section 166 of the Motor Vehicles Act owing to death of her husband Naresh Kumar Garg in a motor accident occurred on 24.11.1994 within the limits of P.S. Kotwali, Roorkee, with the allegation that on the fateful day the deceased Naresh Kumar Garg, aged about 38 years,

was coming back to Roorkee by his own Maruti Car No. DL 5C-8129 driven by himself. He was a contractor and was driving his car in moderate speed and on its right side. When the deceased reached between Saulani river and Malakpur barrier, then at about 1.30 p.m., one Mahindra matador (Mini Bus) No. UP-12B-2788 belonging to Opposite Party No.2 and insured with O.P.No.3(respondents Nos. 2 and 3), came in high speed being driven rashly and negligently by its driver resulting into head-on collision between the two vehicles, thereby causing heavy damage to the said Maruti Car and grievous injuries to the said Naresh Kumar. He was taken to Civil Hospital Roorkee and by then, he succumbed to his injuries. It is also alleged that the deceased was earning Rs. 15,000/- per month. The report of this accident was lodged by the brother of the deceased on the same day at 2.45 p.m. with P.S. Kotwali, Roorkee, and the case was registered at Crime No. 328/94 under Sections 279, 304 IPC. Subsequently, the driver of the said matador Ram Nath was charge-sheeted by the Police. It is further alleged that the deceased had been doing the contractor business of lacs of Rupees and owing to death, the claimants will be deprived of the amount of contract work and payment thereof. It is alleged that the deceased used to spent Rs.10,000/- per month on the maintenance of his family and children and now there is none to look-after the family. In the claim petition the longevity of usual life has been mentioned 80 years. Consequently, the claimants filed the petition on 22.5.1995 for compensation before the learned Tribunal, as mentioned earlier.

The Opposite Party No.1/Respondent No.1, Ramnath, driver of the offending vehicle, contested the petition by filing his written statement. He has admitted death of Naresh Kumar Garg, date time and place of accident and that the Mini Bus belonged to O.P.No.2 and was insured with O.P.No.3; but has denied rest of the

allegations. In the additional pleas, he has pleaded that the said vehicle Mini Bus was insured with the Insurance Company. According to him, the deceased was himself driving his vehicle rashly and negligently and the O.P. is not at all responsible for the accident. The O.P. was holding valid driving licence while the deceased had no driving licence and claimants are not entitled to compensation.

The Opposite Party No.2/Respondent No.2, owner the Matador/mini bus in question, has also contested the claim petition by filing his written statement. He has taken almost the same stand as taken by the driver Ramnath and there is no need to repeat the same.

O.P.No.3/Respondent No.3, Insurance Company of the mini bus in question has also contested the claim petition by filing its written statement. It has alleged that the terms and conditions of the Insurance Policy have been violated in the present case and there has been collusion between owner and the claimants. Plea of non-joinder of necessary parties has been raised; *but nothing has been disclosed for the same.* According to Insurance Company, the alleged accident was result of negligence on the part of the deceased and the Company is not liable to pay compensation.

The Opposite Party No.4/Respondent No.4 filed its written statement and contested the petition on the ground inter alia that the claimants are not entitled to proceed against it and it has also settled the claim in accordance with the Insurance Policy; that the amount claimed is excessive and baseless and that the accident took place due to sole negligence of the driver of the matador/minibus in question.

On the pleadings of the parties, the learned Tribunal framed the following Issues in the case:-

1. ***Whether on 24.11.94 at 1.30 p.m., when the deceased was coming by his Maruti Car No. DL 5C-8129 from B.H.E.L. to Roorkee and reached between Saulani river and Malakpur Barrier, then due to rash and negligent driving by the O.P.No.1 of vehicle No. UP 12 B-2788, dashed Car of Naresh Kumar, resulting into grievous injuries to him and he died in consequence thereof at Roorkee hospital?***
2. ***Whether the deceased was driving his own car rashly and negligently?***
3. ***Whether the deceased was not holding a valid driving licence on the date of accident as alleged by O.P. No.1?***
4. ***Whether the O.P. No.1 was not holding valid driving licence on the date of accident?***
5. ***Whether the petition is not maintainable for want of non-joinder of necessary parties as alleged by O.P. No.3?***
6. ***Whether the O.P.No.4 New India Assurance Company is not liable to pay any amount as alleged by it in the written statement?***
7. ***Whether the claimants are entitled to any relief? If so, to what amount?***

In support of their case, the claimants/appellants have, in documentary evidence, filed First Information Report, Ext. 1, Post Mortem Report of the deceased, Ext. 2, Charge-sheet, Ext. 3, original driving licence of deceased Naresh Kumar, Ext. 4, photo copy of the Insurance Cover Note of the Mini bus Ext.5, Statement of Income Tax Assessment for the year 1989-90 of the deceased, Ext 5A, Assessment Order of Income Tax, Ext. 6, Statement of Income Tax for assessment year 1990-91, Ext. 7, Assessment Order thereof, Ext.8, Income Tax Statement of Assessment Year 91-92 and Assessment Order thereof Exts. 9 and 10, Statement of

Income of Assessment year 92-93 and assessment order thereof, Exts. 11 and 16 and Statement of Income Tax for Assessment Years 93-94, 94-95 and Assessment Orders thereof, Exts 12 to 15 respectively as well as Insurance Policy of deceased of L.I.C. showing the date of birth of deceased 10.7.56 and income tax clearance certificate for Assessment Years 91-92 and 92-93, while in oral evidence, the claimants have examined Smt. Deepa Garg as P.W.1, witnesses Suresh Kumar Anand and Manoj Kumar as P.Ws. 2 and 3.

On the other hand, the O.P. No.1/Respondent no.1 has filed photo copy of his driving licence and original driving licence filed by O.P. No.2, Ext. A-1. O.P.No.2 has filed photo copy of temporary permit of the vehicle UP 12 B-2788, registration certificate and photo copy of notice issued by O.P.No.3 relating to the alleged accident; but the Opposite Parties have examined none in oral evidence.

After hearing both the parties and going through the record, the learned Tribunal took Issue Nos. 1 and 2 together for decision. After discussing the entire material, both oral and documentary, before it, the Tribunal came to the conclusion that the death of deceased Naresh Kumar was not the result of rash and negligent driving on his part, but the O.P.No.1 was driving the vehicle Matador rashly and negligently resulting into grievous injuries and consequent death of the deceased. The learned Tribunal was of the view that it was not a case of contributory negligence of both the drivers. He accordingly decided both the Issues in favour of the claimants and against the Opposite Parties. On Issue No.3, on the basis of driving licence of the deceased, the learned Tribunal held that the deceased was holding a valid driving licence and accordingly decided the Issue against the O.P. No.1. Similarly, finding the valid driving licence of O.P.No.1 on record,

the learned Tribunal held that the O.P.No.1 too was holding a valid driving licence and accordingly decided the Issue in negative. On Issue No. 5, as already mentioned above by us, the contesting O.P. had not disclosed anything on the point of non-joinder of necessary party. The Tribunal has observed that all the necessary parties are on record. The issue was disposed of in the negative accordingly by the Tribunal. Learned Tribunal took Issue Nos. 6 and 7 together. It has elaborately discussed each and every point on these issues in its judgment and ultimately, came to the conclusion that the monthly income of the deceased was Rs. 9000/- and out of this amount, holding that 1/3rd of the same was being spent by the deceased as personal expenses, and Rs. 1000/- to be spent as general expenses. Since the claimant no.1, widow of the deceased, has stated on oath that the deceased used to spent Rs. 5,000/- as personal expenses, therefore, relying on this statement, it has been held that the monthly loss of dependency comes to 9,000-5,000= 4000/- and accordingly, the annual loss has been worked out to be Rs. 48,000/-. As regards use of multiplier, the learned Tribunal has taken into consideration the age of the deceased on the basis of documentary evidence and found that he was in the age group of 35-40 years and the appropriate multiplier of **16** has been applied by the tribunal to work out the amount of compensation. Thus, the Tribunal found that total loss on the death of deceased comes to 48,000 x 16 = Rs. 7, 68,000/-. In addition to it, the Tribunal has also awarded the funeral expenses of Rs. 2000/-, for loss of consortium Rs.5000/- and Rs. 2500/- towards loss of estate and accordingly, total amount of Rs. 7,77,500/- were assessed to be the appropriate compensation as per Schedule II of the Motor Vehicles Act. Besides, the learned Tribunal has awarded simple interest at the rate of 12% per annum from the date of petition on the amount of award and directed the Opposite Party No.3 (Respondent No.3)

to deposit the entire amount within a period of 30 days before the Tribunal.

As mentioned earlier, aggrieved by the said judgment and award, the claimants have come up in appeal for enhancement of the compensation amount before this Court.

It has been contended on behalf of the claimant-appellants before us that the learned Tribunal has failed to appreciate the evidence on record thereby arrived at wrong conclusion in calculating the amount of compensation and that the learned Tribunal has wrongly interpreted the Income Tax papers filed by the claimants for taking the annual income of the deceased.

After having heard learned counsel for both the parties and on careful scrutiny of the entire material before us, we find ourselves unable to agree with the contentions raised on behalf of the appellants, ***firstly***, because the appellants have relied on the income tax returns submitted by the deceased to the Income Tax Department, which have been closely considered by the learned Tribunal and it has also reproduced the relevant extract of the annual income in its judgment. ***Secondly***, because in her statement on oath, Smt. Deepa Garg, widow of the deceased, could not dare say a single word that the monthly income of the deceased was Rs.15,000/- from the contract business though in the petition the income of the deceased has been mentioned Rs. 15,000/- per month, rather she has admitted that there is no fixed income in the contract work. We have gone through the statements of witnesses on record and all the documents, referred to above in the body of this judgment, and find that the income of the deceased has been worked out on the basis of the income tax returns, etc. filed and relied on by the claimant-appellants themselves. Smt. Deepa Garg

as P.W.1 has admitted in her cross-examination that the deceased used to spend Rs. 5000/- per month as personal expenses and relying on this statement, the learned Tribunal has deducted this amount from the average monthly income of the deceased to work out the monthly loss of income to the claimants owing to his death. ***Thirdly***, nothing has been pointed out to us to indicate as to how the findings arrived at by the learned Tribunal are not based on the evidence on record, thereby it has failed to appreciate the same causing prejudice to the appellants. We have carefully gone through the entire documentary evidence, referred to above, in the body of this judgment, marked as Exts 1 to 16, which have been filed by the claimants in support of their claim petition, as well as oral evidence on record, and we find that each and every document coupled with the oral evidence of the parties have been considered by the learned Tribunal to work out the amount of compensation. Moreover, in the arguments advanced before us, no such illegality or material irregularity has been pointed, which may be sufficient to show that the learned Tribunal has fallen in error to come a correct conclusion on any particular Issue framed in the case under appeal. We also find that as per Income Tax Returns for the Assessment Years 1989-90 to 1994-95, i.e. for six consecutive years, relied on by the appellants were taken into consideration by the learned Tribunal and on the basis thereof, average annual income of the deceased has been worked out, which comes to approximately Rs. 9000/- per month. Out of this amount, the learned Tribunal has deducted Rs. 5000/-, which according to the statement of Smt. Deepa Garg, the widow the deceased, her husband used to spend on himself. Thus, the remaining amount, i.e. 9,000-5000=Rs.4,000/- was held to be loss of monthly dependency and accordingly, the loss of annual dependency comes to 4,000 x 12 = Rs. 48,000/-. This finding on Issue Nos. 6 and 7 too is correct in our opinion. In any view of the matter, we are not inclined to come to different

conclusion so as to warrant any interference with the findings of the learned Tribunal. It is significant to mentioned that though the learned Tribunal was of the view that the amount of Rs. 4000/- ought to have been deducted from the monthly assessed income, i.e. Rs. 9000/- had there not been categorical statement of the claimant no.1, Smt. Deepa Garg, in which she has admitted that the deceased used to spend Rs. 5000/- per month on himself. Thus, the annual loss of income due to the death of the deceased has been rightly worked out by the learned Tribunal, as mentioned above. The learned Tribunal has discussed the entire evidence on record, while recording its findings on Issue Nos. 6 and 7 relating to relief and we are in conformity with the conclusion arrived at by the learned Tribunal in holding that the annual loss of income, on the basis of evidence on record, comes to Rs. 48,000/-. Then, while computing the total amount of compensation, the learned Tribunal found that the deceased Naresh Kumar was aged about 38 years at the time of his death and accordingly, he comes in the age group of **35-40** years and the appropriate multiplier in this case was 16. By applying the multiplier of ***16***, the total amount of compensation, arrived at by the Tribunal, comes to 48,000/- x 16 = Rs. 7,68,000/-. In addition to it, the learned Tribunal has also awarded Rs. 2000/- towards funeral expenses, Rs. 5,000/-towards loss of consortium and Rs. 2,500/- towards loss of estate, as provided by the Second Schedule of the Motor Vehicles Act. Thus, the total amount of compensation as worked out by the learned Tribunal comes to Rs. 7,77,500/- and on this amount of compensation, the learned Tribunal has also awarded Simple Interest at the rate of 12% per annum from the date of petition, i.e. 22.5.95 and has directed the O.P.No.3, the Insurance Company of the offending mini bus (respondent no.3) to deposit the entire amount with the Tribunal within 30 days from the date of order. After scrutinizing the entire material before us, we are not inclined to accept the contention raised by the appellants that the

findings of the learned Tribunal are not based on the evidence on record. The last contention that the suitable multiplier has not been applied ignoring the provisions of Schedule of Section 163-A of the Motor Vehicles Act too has no force. Thus, there is nothing on record, which may lead us to take a different view on the basis of the evidence, both oral and documentary, on record, so as to warrant interference with the findings recorded by the learned Tribunal vide impugned judgment and award. No material irregularity or illegality in the impugned Award has been pointed out in the course of arguments. The contentions raised by the appellants are not at all tenable. Accordingly, we have no option but to uphold the findings recorded by the learned Tribunal in the case under appeal. Consequently, the appeal deserves to be dismissed on merits.

The appeal is hereby dismissed with no order as costs. The impugned judgment and award is upheld.

(B.S. Verma, J.) **(P.C. Verma, J.)**

RCP